

# Memorandum of Understanding between the Information Commissioner and the Investigatory Powers Commissioner

## **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for cooperation and information sharing between the Information Commissioner ("the **IC**") and the Investigatory Powers Commissioner ("the **IPC**"), collectively referred to as "**the Parties**" throughout this document. In particular, it sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information between the parties. The shared aims of this MoU are to enable closer working between the Parties, including the exchange of appropriate information, so as to assist them in discharging their regulatory functions.
2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the IC or the IPC. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

## **The role and function of the Information Commissioner**

3. The IC is a corporation sole appointed by Her Majesty the Queen under the Data Protection Act 2018 to act as the UK's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.
4. The IC is empowered to take a range of regulatory action for breaches of a number of pieces of legislation and regulations. Further information on the IC's statutory responsibilities can be found on her website at:

<https://ico.org.uk/about-the-ico/what-we-do/>

## **Functions and powers of the Investigatory Powers Commissioner**

5. The IPC is an independent statutory office holder established by the Investigatory Powers Act 2016 to provide oversight and authorisation of the use of investigatory powers by the intelligence agencies, police forces and other public authorities. The IPC is

supported by the Investigatory Powers Commissioner's Office ('IPCO' - an arm's length body) consisting of a team of Judicial Commissioners, inspectors and other staff. The IPC may delegate his functions to the Judicial Commissioner and his staff. The IPC is further supported by the Office for Communications Data Authorisations and Technology Advisory Panel, whose activities fall outside the scope of this MoU.

6. Further information about the IPC's responsibilities can be found on IPCO's website at:

<https://www.ipco.org.uk/>

### **Purpose of information sharing**

7. The purpose of the MoU is to enable the parties to share relevant information and experience which enhances their ability to exercise their respective functions.
8. This MoU should not be interpreted as imposing any requirement on either party to disclose information. In particular, each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with both the GDPR and the DPA 2018. The MoU sets out the potential legal framework for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

### **Principles of cooperation and sharing**

9. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, each Party will alert the other to any potential breaches of the legislation regulated by the respective organisation which is discovered whilst undertaking regulatory duties, and provide relevant and necessary supporting information.
10. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Parties will:
  - maintain a working liaison through a nominated point of contact to regularly discuss matters of mutual interest (this may involve participating in multi-agency groups to address

common issues and threats)- see Annex A for points of contact;

- Consult one another on any issues which might have significant implications for the other organisation, including sharing draft policy positions where appropriate; and
- Conduct joint audits where appropriate, providing expertise in relation to relevant areas of responsibility.

11. The Parties will comply with Government security requirements relating to the processing of data unless this is incompatible with the discharge of their statutory functions.

### **Lawful basis for sharing information**

#### *Information shared by the IPC with the IC*

12. The IC's statutory functions relate to the matters referred to at paragraph 4, and this MoU governs information shared by the IPC to assist the IC to meet those responsibilities. To the extent that information which the IPC proposes to share comprises personal data (as defined under the GDPR and DPA 2018), the IPC is a Data Controller and so must ensure that it has a lawful basis to share it and that doing so would otherwise be compliant with the data protection principles.

13. Section 232(2) of the Investigatory Powers Act 2016 provides that the IPC or a Judicial Commissioner (JC) may provide advice or information to a public authority in relation to matters for which the IPC/JC are responsible. Additionally, the IC's information gateway in section 131 of the Data Protection Act 2018 means that IPC is able (but not required) to share information with the IC which is necessary for the IC to discharge her functions, without breaching any enactment or rule of law which would otherwise prohibit or restrict that disclosure.

#### *Information shared by the IC with the IPC*

14. The IC, during the course of her activities, will receive information from a range of sources, including personal data. She will process all personal data in accordance with the principles of the GDPR, the DPA 2018 and all other applicable legislation. The IC may identify that information she holds, which may include personal data, ought

to be shared with the IPC as it would assist them in performing their functions and responsibilities.

15. Section 132(1) of the DPA 2018 states that the IC can only share confidential information with others if there is lawful authority to do so. In this context, the information will be considered confidential if has been obtained, or provided to, the IC in the course of, or the purposes of, discharging her functions, relates to an identifiable individual or business, and is not otherwise available to the public from other sources. This therefore includes, but is not limited to, personal data. Section 132(2) of the DPA 2018 sets out the circumstances in which the IC will have the lawful authority to share that information with the IPC. In particular, it will be lawful in circumstances where:
  - The sharing was necessary for the purpose of the IC discharging her functions (section 132(2)(c));
  - The sharing was made for the purposes of criminal or civil proceedings, however arising (section 132(2)(e)); or
  - The sharing was necessary in the public interest, taking into account the rights, freedoms and legitimate interests of any person (section 132(2)(f)).
16. The IC will therefore be permitted to share information with the IPC in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 15. In doing so, the IC will identify the function of the IPC with which that information may assist, and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with the IPC amounts to personal data the IC will consider whether it is necessary to provide it in an identifiable form in order for the IPC to perform its functions, or whether disclosing it in an anonymised form would suffice.
17. If information to be disclosed by the IC was received by her in the course of discharging her functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of that Act.

18. Where information is to be disclosed by either party for law enforcement purposes under section 35(4) or (5) of the DPA 2018 then they will only do so in accordance with an appropriate policy document as outlined by section 42 of the DPA 2018.
19. The IPC is not subject to the Freedom of Information Act (FOIA) 2000. Where a request for the disclosure of information is received by either Party under data protection laws or FOIA, the recipient of the request will seek the views of the other Party, where the information being sought under the request includes information obtained from, or shared by, the other Party notwithstanding that the IPC is not subject to FOIA. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request as Data Controller in respect of that data.

**Method of exchange**

20. Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.

**Confidentiality and data breach reporting**

21. Where confidential material is shared between the Parties it will be marked with the appropriate security classification and, where appropriate, handling conditions.
22. Unless it would be inconsistent with its legal obligations, where one Party has received information from the other, it will use its best endeavours to consult with the other Party before passing the information to a third party or using the information in an enforcement proceeding or court case.
23. Where confidential material obtained from, or shared by, the originating Party is wrongfully disclosed by the receiving Party, this Party will bring this to the attention of the originating Party without delay. This is in addition to obligations to report a personal data breach under the GDPR and/or DPA 2018 where personal data is contained in the information disclosed.

## **Duration and review of the MoU**

24. The Parties will monitor the operation of this MoU and will review it biennially.
25. Any minor changes to this memorandum identified between reviews may be agreed in writing between the Parties.
26. Any issues arising in relation to this memorandum will be notified to the point of contact for each Party.

## Annex A

### **Key contacts**

1. The parties have both identified a single point of contact for this MoU:

2.

<b>Information Commissioner's Office</b>	<b>Investigatory Powers Commissioner's Office</b>
	

3. The nominated points of contact for each party will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify ways to continuously strengthen the Parties' working relationship.

### **Signatories**

<b>Director/Executive Director/Commissioner</b>	<b>Chief Executive/ Investigatory Powers Commissioner Investigatory Powers Commissioner's Office</b>
 Date: 22 December 2020	 Date: 14 December 2020